IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1381/06

Santosh Balasaheb Shelake .....Applicant

V/s.

The state of Maharashtra .... Respondent

Shri.Uday Warunjikar Adv. for the applicant
None appears on behalf of the State.

CORAM : V.M. KANADE, J.
DATE : 04/04/06

P.C:

1. Heard the learned Counsel for the applicant.

2. This is an application for an anticipatory bail. The applicant has an apprehension that he is likely to be arrested in connection with C.R.No.45/2006 registered with Talegaon Dabhade Police Station for the offences punishable U/s.326, 143, 147, 504, 506 r/w 34 of IPC.

3. It is alleged that one of the co-accused also has filed cross complaint against the present complainant for the offence punishable U/s.324, 323,

504 r/w 34 of IPC.

4. Learned Counsel for the applicant submitted that Trial Court rejected application for anticipatory bail on the very same day without calling for the police papers and without passing reasoned order. He submitted that only allegations against the present applicant is that he had assaulted the complainant on his left arm. He submitted that in the light of counter-cases which are filed by the present applicant and complainant, Sessions Court ought to have granted anticipatory bail. He further submitted that Sessions Court was duty bound to scrutinize the facts and call for the police papers and summery rejection of the application for anticipatory bail is illegal.

5. It is not possible to accept the submissions made by the learned Counsel for the applicant. I have perused the F.I.R. which is annexed with the application. F.I.R. discloses commission of cognizable offence and the complainant was injured in the assault by the applicant and other accused. In my view, this is not a fit case for the grant of anticipatory bail.

6. I have perused the order passed by the Sessions Court. The Sessions Court has not given any reason while rejecting the application for anticipatory bail. It is expected that while passing any order, the Sessions Court should record reasons why the application for bail is rejected or is allowed. Submissions made by the learned Counsel for the applicant that police papers were not called and therefore the said order is illegal can not be accepted. Sec.438 gives discretion to the Sessions Court or the High Court to grant anticipatory bail in exceptional cases. Discretion which is to be used by the Court is to be exercised judiciously. It is possible that after going through facts of the case and FIR court may come to the conclusion that case for grant for anticipatory bail is not made out. There is no provision which states that Sessions Court is duty bound to call for the police papers wherever any anticipatory bail is filed. Law on the grant of anticipatory bail is very settled by various judgments of Supreme Court and this Court. In the result, the application for anticipatory bail is rejected.

7. Trial court shall not be influenced by any

observations made by this court while rejecting anticipatory bail and if application for regular bail is filed by the applicant, same shall be considered on merits and in accordance with law.

8. With these directions, the application is accordingly disposed of.

V.M. KANADE, J.